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No. 143

In the Supreme Court of the United States

OCTOBER TERM, 1937

UNITED STATES OF AMERICA, PETITIONER

v.

HELEN J. STEVENS, ADMINISTRATRIX, ET AL.

On a Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENTS

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OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 24-27) is reported in 15 F. Supp. 139. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 36) is reported in 89 F. (2d) 151 (sub. nom. *Stevens* v. *United States*).

JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered March 15, 1937. Petition for a writ of certiorari was filed June 15, 1937 (R. 28), and granted October 11, 1937 (R. 28). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the Act of June 25, 1910, c. 384, 36 Stat. 703, require an agreement by the applicant for admission to the National Home for Disabled Volunteer Soldiers that, on his death while a member, all his personal property shall vest in the Board of Managers of said "Home," irrespective of the fact that he leaves heirs or leaves a will; or did Congress intend to require an agreement that would vest in said Board of Managers only that property of said deceased member which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State?

STATUTE INVOLVED

The statute involved is set forth in Appendix A (infra p. 18).

STATEMENT

The agreed statement of facts (R. 11-15) may be summarized as follows:

One Thomas McGovern enlisted in the United States Army in 1877 and was honorably discharged therefrom in 1882. On November 11, 1925, at the age of 72, he was admitted to the Southern Branch of the National Home for Disabled Volunteer Soldiers located at Hampton in the State of Virginia (which place is hereinafter referred to as the "Home"). On April 17, 1925, McGovern signed an application for admission to the "Home," based on the provisions of the Act of June 25, 1910, infra, Appendix A. This application (R. 13) contained the following provisions:

"The said Thomas McGovern hereby agrees that, in event of his death while a member of the National Home for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pension or otherwise derived, shall vest in and become the property of said Board of Managers for the sale, use, and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, and subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member; and he further stipulates and agrees that he will abide by and obey the rules and regulations made by the Board of Managers, or by their order, that he will perform all duties required of him, and obey all lawful orders of the officers of the 'Home.'"

In his application, McGovern stated he had a wife and four children, address unknown.

McGovern died September 17, 1928, while a member of the "Home," having lived therein for about two years and ten months. He was survived by his said wife, Anne J. McGovern, and his said four children: Helen J. Stevens, Catherine E. McGovern, Lena F. Donovan, and Robert E. McGovern (R. 11-12).

At the time of McGovern's admission to the "Home" and at the time of his death, his wife lived with his married daughter, Mrs. Stevens, and his unmarried daughter, Catherine E. McGovern, in

the City of Boston. The said Lena F. Donovan, at that time a married daughter of the decedent, lived with her husband at New Haven, Connecticut. The son, Robert E. McGovern, at that time was an insane person, having been committed as such by a Massachusetts Court in the year 1918, and confined at the Massachusetts State Hospital at Gardner, Massachusetts (R. 12).

McGovern had been a resident of the City of Chelsea, Suffolk County, Massachusetts, since 1889, and that City was his domicile at the time of his death (R. 12). McGovern and his wife and family lived together in Chelsea until the year 1904, when they parted, McGovern and the son residing in one part of Chelsea, and the mother and three daughters in another section of the same City, and from that time on, McGovern and his said family were never reunited. A few years after the McGoverns parted, a great conflagration visited the City of Chelsea, resulting in forcing Mrs. McGovern and her three daughters to take up their residence in the City of Boston, which City adjoins the City of Chelsea. In the course of time, two of the daughters became married women, and one of them, the respondent Lena F. Donovan, took up her residence with her husband in New Haven, Connecticut, and in 1918 the boy, Robert E. McGovern, who had been living with the decedent, his father, became insane (R. 12) and, from that time on, McGovern lived alone in the City of Chelsea, until he entered the "Home."

The said widow and children, above named, were, at the time of McGovern's death, his only heirs at law and next of kin and the only persons entitled, under the laws of Massachusetts, to receive his per-

sonal estate if he died intestate (R. 12). No one in behalf of the "Home" nor any agent of the government made any attempt to locate the said widow and children at the time of McGovern's death or at any time subsequent thereto (R. 12). The said widow, Anne J. McGovern, died March 4, 1933, almost four and one-half years after the death of her husband, never having learned of it (R. 12).

At the time of his death, McGovern had a deposit in the savings department of the Chelsea Trust Company, of Chelsea in said County of Suffolk, amounting to over $3,800 (R. 12) and a deposit in the Boston Five Cents Savings Bank, of Boston in said County of Suffolk, amounting to $1980 (R. 12).

It was over seven years before the first knowledge of the death of the decedent was received by any of his said heirs at law and next of kin (R. 12). Shortly after the receipt of the notice of his death, the respondent Helen J. Stevens, was duly appointed administratrix of the estate of Thomas McGovern by the Probate Court for the said County of Suffolk (R. 12). Immediately after the said appointment, the administratrix brought a bill in equity in the said Probate Court, praying for the determination of the ownership of the bank deposits above described (R. 5). No part of the money and other personal property owned by the decedent at the time of his death was derived from the United States Government in the form of a pension or otherwise (R. 12).

A guardian was duly appointed to represent Robert E. McGovern, the insane son of the decedent.

On April 10, 1936, the petitioner brought a proceeding against the Chelsea Trust Company, the administratrix, and all the children of McGovern including the insane person, because the Bank refused to pay over to the petitioner on demand the amount of the deposit to the credit of the account registered in the name of the decedent (R. 1-3). The administratrix and all the children of the decedent denied the application of the statute to the particular facts (R. 4-10).

On June 5, 1936, the District Court entered judgment for the petitioner (R. 15) and on appeal this judgment was reversed by the Circuit Court of Appeals for the First Circuit, one judge dissenting (R. 22-27).

SUMMARY OF ARGUMENT

I

No title vested in the Board of Managers at McGovern's death. He had a wife and four children living at his death. Therefore there could be no escheat. The purpose of the Act was to prevent an escheat to the State. The reclamation period, which is common to escheat, applies to unknown heirs and undiscovered wills. Known heirs are not compelled to reclaim.

II

No constitutional question is involved if the Act and the contract made pursuant thereto be properly construed.

ARGUMENT

I

The contract in McGovern's application for membership in the "Home" did not, at his death, vest his personal property in the Board of Managers of the "Home" (or its successor) because he left heirs at law and next of kin, to wit: a wife and four children.

The contract based on the Act can be no higher than the Act itself. By the Act, Congress empowered a government agency in charge of the management of The National Home for Disabled Volunteer Soldiers, to change the form of application for membership so that a contract would be embodied in the same between the applicant and the "Home" in respect to the disposition of the applicant's personal estate if he died while a member of the "Home," intestate, leaving no heirs at law or next of kin.

Prior to the passage of the Act involved in this case, a substantial number of inmates of the branches of The National Home located in various parts of the country, had died intestate, leaving no heirs at law nor next of kin. The bank deposits standing in the names of these decedents, in the various localities, taken collectively, amounted in some instances to $30,000, and that money was subject to the escheat laws of several states. See Appendix B (infra pp. 19-25).

To remedy this situation and to divert such funds to the use of the surviving members of the "Home," Congress passed the Act now before the Court. The purpose of the Act was to prevent the escheat to the States by means of an agreement in the members' application for membership. The Act did not

change the usual conditions for admission; that is the status of the applicant as an honorably discharged soldier and disability. As heretofore, it was immaterial whether the applicant entered the "Home" with money or without it. The whole intent and purpose of Congress was to prevent an escheat and to restrict the disposition of the property of the applicant at his death only in the event that he left no heirs or next of kin, and left no will.

The Act authorizes a contract to defeat an escheat to the State; the Board of Managers of the "Home" are to be substituted for the State. Obviously, the Board of Managers will take no title unless there are circumstances parallel to an escheat; that is, intestacy without heirs or next of kin.

There are not two agreements in the application for membership. The Act provides for one contract, and it is not divisible. The application based on the Act must be likewise. The authorized agreement is that, if McGovern died while a member of the "Home," leaving no heirs at law or next of kin, all his personal property not disposed of by will, should vest in and become the property of the Board of Managers of the "Home" for the benefit of the post fund. The Act did not authorize an agreement that McGovern's estate, in any event, would vest in the Board of Managers, irrespective of heirs or a will. These respondents maintain that the words

> ". . . . and that all personal property of said applicant shall, upon his death while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member,"

refer to the member dying intestate without heirs or next of kin.

Provisions for the reclamation of property by heirs are common in escheat laws, and these provisions follow after a determination of the question of whether or not a man leaves heirs or next of kin capable of inheriting. For instance, in Massachusetts, after proceedings have been had and no heirs found, the undiscovered heirs still have six years from the date of the transfer of the funds to the State Treasurer, in which to reclaim. See Mass. G. L. Ter. Ed. c. 194, s. 14, 15.

Reclamation, however, has no application where there is no escheat, because the heirs are at hand, and they take the property. The lack of a provision in the Act for notice is understandable in the respondents' construction of the Act because the presence of heirs or the fact of a will relieves the necessity for notice.

Congress knew that the estate of a deceased member of the "Home" would be probated in accordance with the laws of the state where the deceased member had his domicile. These proceedings would settle the fact of heirship or testacy. The Board of Managers would have no other way to determine whether the deceased member left heirs at law or next of kin, or left a will disposing of his property. There must be probate to determine the heirs; there must be probate for the allowance of the instrument alleged to be a will. Obviously, a department of the government could not determine these matters.

There is a positive disagreement between the petitioner and these respondents as to the con-

struction of the Act. We therefore seek the aid of legislative intent to construe the Act. The intent of Congress is found in a discussion recorded in Cong. Rec., Vol. 45, part 7, pp. 7011-13, 7101, see Appendix B (infra pp. 19-25). This discussion shows conclusively that the intent of the proponents of this legislation is to pass an Act which would affect only the personal property of an applicant who died a member of the "Home," leaving no heirs at law or next of kin, and not making any disposition of his property by will. Statutes must be construed to effectuate the legislative intent.

The contention of these respondents is upheld by language contained in the case of *National Home* v. *Wood*, 299 U. S. 211, p. 215, where this Court said:

> "The Act directs the disposition of personal property left by members dying intestate and without heirs. Congress intended to vest in the board of managers for the post fund only that which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State."

II

There is no need to find the statute unconstitutional if it is construed properly. The Circuit Court found the statute unconstitutional because it adopted the petitioner's construction. By the petitioner's construction of the statute, McGovern's property, on his death, vested immediately in the Board of Managers. The Circuit Court said this means that Congress was legislating concerning the devolution of the personal property of a deceased member, none of which was pension money or derived from the government.

This construction of the statute seemingly sets up a process for the devolution of a member's property at his death because the property vests in the Board of Managers, subject to be divested by a claim made by an heir or legatee within the five-year period following the death. Under this construction, who will determine whether or not there are heirs and whether or not the instrument called a will is a legal will? Presumably the Board of Managers. In other words, probate questions will be settled in the office of the Board of Managers and not by any court, although the statute speaks of heirs and legatees and a will, which indicates strongly that the Legislature had in mind the probate of the estate of the deceased member.

The common law rule, that the personal property of a deceased person vests in the executor or administrator, prevails in Massachusetts. See *Lawrence* v. *Wright,* 23 Pick. 128, where Shaw, C. J., speaking for the Court, says, at p. 129:

> "The personal property of a deceased person vests in the executor or administrator; and when an administrator is appointed, the appointment relates back and vests the property in him from the decease of the intestate. Those who have the property in custody in the mean time, have no further power over or interest in it, than is necessary to enable them to keep it safely and have it forthcoming, when called for by the administrator."

McGovern died domiciled in Massachusetts, intestate, leaving a widow and four children, and under the laws of Massachusetts, they were the persons entitled to receive the distributive estate, one-

third to the widow, the remaining two-thirds equally among the surviving children. Mass. G. L. Ter. Ed. c. 190, secs. 1, 2 and 3.

The petitioners contend the laws of Massachusetts in respect to the descent of personal estate do not affect McGovern's agreement with the "Home." The majority of the Circuit Court believed otherwise. They apparently did not believe the contract contained in McGovern's application for admission to the "Home" was one of those numerous contracts "to dispose of one's property in a specified way at one's death," the Court having in mind that the usual contract of that nature is plainly a matter of bargaining. It is a business deal. The parties are dealing at arm's length. One party to the contract has property that he is willing to have pass to the other party provided the other party performs the act required of him by the owner of the property. In these contracts, there is never the question of whether or not the decedent left heirs or next of kin or whether or not he left a will. The lower Court must have viewed the contract now before the Court as one between an old disabled volunteer soldier and his country. There was no bargaining. McGovern was entitled to enter the "Home" because of his service in the Army and because of his disability.

The "Home," from its creation, has been supported by appropriations from Congress, and an applicant who met all the other requirements was welcome to admission, whether or not he had property. All the "Home" wanted from the applicant was an agreement that, if his property was to escheat to a State, he, the applicant, would pass it to

the "Home" for the benefit of the post fund, a not very burdensome condition and one that would be met gladly by any reasonable applicant.

From the foregoing, it is not difficult to see what led the Court below to declare the statute unconstitutional because Congress had, by this statute, violated the reserved rights of the States under the Tenth Amendment to the Constitution.

The majority of the Circuit Court also inferred that the statute, to be effective, should have contained a provision for notice *"so that the heirs or next of kin would at least have an opportunity to assert a claim of reclamation within the period of five years limited by the statute; and that in no event should they be deprived of their rights in the estate of a deceased member without notice and an opportunity to assert a claim."*

The lower Court undoubtedly made this inference because it likened the situation now before us to a case where there is an escheat and where no title vests in the State without a judicial determination of heirs.

If McGovern's property was to escheat to the State of Massachusetts, there would have to be a determination of heirs. See *Wilbur* v. *Tobey,* 16 Pick. 177, 180, where the Court, speaking through Shaw, C. J., says:

> "Where a subject dies intestate, as the estate descends to collateral kindred indefinitely, the presumption of the law is that he had heirs, and this presumption will be good against the Commonwealth until it institutes the regular proceedings by inquest of office, by which the fact, whether the intestate did or did not die without heirs, can be ascertained, and if this

fact is established in favor of the Commonwealth, it rebuts the contrary presumption, and the Commonwealth by force of the judgment, and of the statute before cited, becomes seized in law and in fact. In such a case, therefore, the Court are of opinion that an inquest of office is necessary, and that the Commonwealth cannot be deemed to be seized without such inquest. So far as this depends upon general principles, it seems to be a rule highly reasonable in itself and tends greatly to the security and regularity of titles. By the mode of taking inquests, prescribed by the laws of this Commonwealth . . . *general notice is to be given of the claim of the Commonwealth, any person is admitted to traverse it,* a trial by jury is to be had, and costs are given to the prevailing party. These are highly reasonable and equitable provisions, and it is manifestly for the quiet of the Commonwealth and the security of the citizen, that they should be pursued, before the Commonwealth shall be permitted to take into its own custody and dispose of assets upon a claim which, if not doubtful, is at least not apparent." (Italics ours)

The principle, as set forth above by Chief Justice Shaw, has been approved by this Court in *Hamilton* v. *Brown,* 161 U. S. 256, a case involving the law of escheat in Texas, which case has been followed in *Christianson* v. *County of King,* 239 U. S. 356, a case involving the escheat law of the Territory of Washington, wherein the Court, speaking through Hughes, J., said, at p. 373:

"It was competent for the Court to inquire whether there were heirs, and if there were such, to determine who are entitled to take, according to the order prescribed by the statute,

and also, if it was found that there were no heirs, to make the distribution to the county as the Statute required. *It is apparent that there was no deprivation of property without due process of law. The Court, after appropriate notice, did determine that there were no heirs and its decree being the act of a competent jurisdiction under a valid statute bound all the world including the plaintiff in error.*" (Italics ours)

It is hard to believe that the Legislature, in the Act of June 25, 1910, would deprive the heirs of McGovern of the safeguards that would protect them if there had been an escheat to the Commonwealth of Massachusetts. If the statute substitutes the Board of Managers for the Commonwealth of Massachusetts in case of an escheat, are not the Board of Managers, by implication, required to have a determination of heirs in order to foreclose the rights of heirs, within the time limited by the statute? The statute is an escheat in intent, if not by express language, and does not this imply notice? Clearly, if the Commonwealth of Massachusetts had done what the Board of Managers have done in this case, there would have been a deprivation of property without due process of law.

If we adopt the petitioner's construction of the statute involved in this case, we confront a situation where one of the heirs was insane before the admission of his father to the "Home" and, in fact, at the time of his father's death, and was never legally capable of asserting a claim in the period of reclamation limited by the statute. It is hardly likely that the Legislature intended this situation, and of course this situation is not met if you adopt

the construction put on the statute by these respondents for, in that case, every heir under a disability would be protected by an administrator or an executor who would act in behalf of those heirs who could not act for themselves.

These respondents maintain that the decision of this Court in the Wood case, 299 U. S. 211, does not prevent the Court now from deciding that the statute is unconstitutional if we adopt the construction put on the same by the petitioner: that, on the death of a member, all his property immediately vests in the Board of Managers, irrespective of whether or not he left heirs or a will.

We do not question the power of Congress to legislate in respect to pension money derived from the United States. The congressional debates (See Appendix B, infra pp. 19-25) make clear that the main purpose of Congress was to have a contract in relation to the member's own property; that the inclusion of the pension money was incidental to the main purpose of the statute. The whole situation in respect to this statute rebuts the presumption against its severability because the part of the statute referring to pension money is bound to be good, while that part of the statute in reference to the member's own estate, has a doubtful taint, until this Court has passed on the statute.

A statute bad in part is not necessarily void in its entirety. Good provisions within the legislative power, may stand if separable from the bad. *Dorchy* v. *Kansas*, 264 U. S. 286, 289.

Accordingly, from the construction put on the statute by the petitioner, a constitutional issue is raised with some force. These respondents, how-

ever, still maintain that no constitutional question is involved if the statute and the contract made pursuant thereto, be properly construed.

CONCLUSION

For the reasons heretofore stated, it is respectfully submitted that the decision by the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

JAMES E. CARROLL,

Attorney for the Respondents, Helen J. Stevens, Administratrix, and the Heirs of Thomas McGovern.

APPENDIX A

Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

> Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.

APPENDIX B

Discussion by Congressional Committee upon May 27 and May 28, 1910, concerning Act of June 25, 1910, C. 384, 36 Stat. 736, Sec. 136, Title 24, U. S. C., found in Vol. 45, Part 7, pp. 7011-13, 7101 of the Congressional Records. (61st Congress, 2nd Session.)

MR. TAWNEY:

"The reason for this provision is this—and I trust I may have the attention of the Committee, because this is a matter of considerable importance. At all of the homes there are a great many soldiers die, leaving on deposit in the banks of the city in which the home is located a certain amount of money. Now, if they die intestate and without heirs that money remains in the bank. Instances have occurred where men have fraudulently taken out letters of administration for the purpose of getting the money on deposit belonging to the soldier at the time of his death. At the Dayton Home in Ohio there is in the banks today over $30,000 unclaimed by relatives or heirs or legatees.

"That fund is increasing, and the committee had information to the effect that the State of Ohio, proceeding under the law of escheat, was about to bring suit against the managers of the banks to recover that money for the benefit of the State. There is in the neighborhood of $30,000 on deposit in the banks of Milwaukee, and there are large sums of money on deposit, unclaimed, in the banks of the cities where all of the other homes are located. Now: Proceeding upon the theory that *where the old soldier dies without heirs or legatees,* he would rather

that money which he leaves behind should be paid into the post fund for the benefit and comfort of his old comrades rather than allow it to go back to the State, of which he might not even be a citizen, because these men who are in the home are not always citizens of the State in which the home is located; for that reason we have provided here, or we have incorporated this provision, so that in every case where the old soldier dies and leaves money on deposit, or other property undisposed of by will and unclaimed by legatees or heirs, that money shall be used for the benefit of his comrades and not go back to the State under the law of escheat.

"That is the reason for it, and that is all this provision accomplished; and in order to make it legal this provision provides expressly that the form of application be so changed that every old soldier who applies for admission to one of these homes, in making out his application, is notified of this fact and his consent to the disposition of his money and property at the time of his death is obtained. In no other way can we change the law of descent in the States. I do not think there is a member of this House who can justly complain of or criticise the provision. It is in the interest of the old soldiers remaining here after their comrade has died without disposition of his property, that in that event his property, whatever it may consist of, may be deposited for the benefit of those old soldiers who are occupants of these homes."

MR. COX:

"I notice that the paragraph provides that the application shall constitute a binding and valid contract between the applicant and the

Board of Managers, not only for the money that the soldier may have as a result of his pension, or the pension he may have remaining at the time of his death, but for all of his personal property. 'Is this proper legislation?' "

MR. TAWNEY:

"Now, the gentleman from Indiana is a lawyer, and a good lawyer, and he knows that is not the effect of this provision. I will say the provision was drawn by Judge Smith after the most careful consideration, taking into account the fact that in all of the States there is provision made for the settlement of estates belonging to deceased citizens. This provision would call to the attention of the applicant and it would be notice to him that if he had no heirs, which of course he would know, or if he had not made a will disposing of his property, he would have notice of the fact and could arrange to dispose of his property by will."

MR. COX:

"Am I right in construing the provision to mean that the application of the applicant seeking admission to the institution and his admission constitutes a binding contract for the disposition not only of the money he may have as the result of his pension, but of all personal property of which he may be the owner?"

MR. TAWNEY:

"As applied to members of the soldiers homes who die in the homes without disposing of their property by will or otherwise, or *having no heirs.*"

MR. COX:

"But is it not made a matter prerequisite under the paragraph that before an individual can be admitted as an inmate, he must enter a contract bargaining away not only his pension, but his personal property?"

MR. TAWNEY:

"He is not bargaining it away at all. He is merely agreeing that in the event of his death while an inmate of the home, and in the event of his not disposing of the property himself, or of *his having no heirs,* rather than see his property and his money go to the state in which the home is located * * * * * it shall be disposed of for the benefit of his comrades."

MR. COX:

"Does the provision carry all of the personal property that the old soldier may die the owner of while he is an inmate of the institution?"

MR. TAWNEY:

"Certainly. It carries personal property, which includes, of course, any money which he may have on deposit; but it carries it to the home only in the event of his death in the home, *without heirs,* and without having disposed of his property before death."

MR. KEIFER:

" * * * * * I have no trouble about the purpose and propriety of having the estate of deceased members of the National Soldiers Home go to the benefit of their comrades if they die as members intestate and without heirs. But I think it is well for us to look and see whether we can accomplish that purpose by this provision. It is an attempt by federal law to

provide a new mode of disposing of an estate without regard to state law. It is an attempt to make, in effect at least, a statute of descent. * * * I think that if the contract is of a proper character it may do this, otherwise I think this provision will merely lead to litigation. *The purpose of the bill is to cut off the right of the state to take the property that in legal effect escheats to the state.*"

(Discussion as to rights of creditors and consensus of opinion that home would only take what was left after all debts of pensioner were paid,—also as to sufficiency of contract and moral question as to whether the State or the institution is more entitled to the funds.)

MR. COX OF INDIANA.:

"I do not believe we should offer the old soldiers the necessity to bargain away the pittance he has. My idea is that he should enter the home free and untrammeled."

MR. KEIFER:

"You say the soldier is required to bargain away his property in advance. I do not understand that there is anything of the kind in the provision. On the contrary, he is only *making a contract by which he keeps it from going to the state.*"

MR. COX:

"A man's property rights are absolute, sacred rights. I do not care if he has $5.00 or $5,000,000 worth of property, it is his."

MR. CULLAP:

"I will ask this question. Is it not fair to assume that under this provision any legatee legally entitled to the estate may come in after the death?"

SUPREME COURT OF THE UNITED STATES.

No. 143.—October Term, 1937.

The United States of America, Petitioner, *vs.* Helen J. Stevens, Administratrix, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[January 17, 1938.]

Mr. Justice Black delivered the opinion of the Court.

Can the United States enforce a contract executed by an ex-soldier in order to obtain admission into the National Home for Disabled Volunteer Soldiers, which contract provides that upon the death of the veteran while a member of the Home, all his personal property shall pass to the Home subject to be reclaimed within five years by any legatee or person entitled to receive the property by inheritance?

The district court held the contract valid and enforceable.[1] The Court of Appeals reversed.[2]

The facts disclose that:

Thomas McGovern, a native of Ireland, served in the United States Army from 1877 to 1882; in 1904 his wife and three daughters left him, but a son, Robert, continued to live with McGovern until 1918 when the son (represented in this cause by a guardian) was committed to a state home for the insane; the complete severance of all family ties and associations continued until McGovern's death, and the wife and daughters, living most of the time in Boston, Massachusetts, were wholly unware of his whereabouts for the last twenty years of his life, most of which were spent in nearby Chelsea; under these circumstances, McGovern, age 72, in his application for admission to the Home, stated that the names and addresses of his wife and nearest relatives were unknown, and that he desired admission because he was "unable on account of his disability to earn his living"; a doctor's certificate showed that his mental condition was good, at the date of admission, but that he needed medical treatment and attention due to serious physical

[1] 15 Fed. Supp. 139.

[2] 89 F. (2d) 151; certiorari granted, — U. S. —.

weakness and ailments. His written agreement with the Home stated:

"The said Thomas McGovern hereby agrees that, in event of his death while a *member of the National Military Home* for Disabled Volunteer Soldiers, leaving no heirs at law or next of kin, all personal property owned by him at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers *for the sole use and benefit of the post fund of said home, and that all personal property of the said Thomas McGovern shall upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member;* . . ."

At the time of his admission into the Home, McGovern had savings deposits which were his personal property. September 17, 1928, while an inmate of the Home, he died intestate. His wife died in 1933 without knowledge of his death, and none of the daughters learned of his death until October 19, 1935. No claim to McGovern's property was filed with the Home within five years after his death.

In this action brought by the United States to require payment to the Home of funds of McGovern on deposit in a Massachusetts bank at his death, it is contended:

(1) that, because McGovern left surviving heirs, the title to his personal property did not pass to the Home;

(2) that the Act of June 25, 1910[3] authorizing the Home to make the contract with McGovern is invalid.

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[3] Act of June 25, 1910, c. 384, 36 Stat. 703, 736 (U. S. C., Title 24, Sec. 136):

"Hereafter the application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board of Managers for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Board of Managers, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board of Managers, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Board of Managers is directed to so change the form of application for membership as to give reasonable notice of this provision to each *applicant and as to contain the consent of the applicant to accept membership upon the conditions herein provided.*"

1. There is no ambiguity in the contract or in the Act which authorized it. No words in the contract indicate that the personal property should pass to the Home only in the absence of persons entitled to take by law. On the contrary, both the contract and the Act evince a clear intent that the personal property of the veteran, when not claimed by heirs or legatees *within five years after the veteran's death*, should pass to the Home to be used to provide comforts and entertainment for its inmates. "The measure (the Act of 1910) leaves the member free to dispose by will and safeguards to the legatees and heirs the right *within five years* to reclaim 'all the property' that belonged to him at the time of his death. As to that, there is no ambiguity and therefore nothing to construe." *National Home* v. *Wood*, 299 U. S. 216.

2. The Court of Appeals was of the opinion that the Act of Congress authorizing the contract was void as an interference with the reserved rights of the state of the veteran's legal domicile when he died (Massachusetts) in that "it was at most but an attempt to make a future testamentary disposition of McGovern's property, when such a disposition could only be effected by will."

This contract, however, is valid under the applicable state law.[4] The Supreme Court of Massachusetts in 1931 in the case of *Hale* v. *Wilmarth*, 274 Mass. 189, said, "The statute of wills, . . . does not prevent an owner of property from stipulating by contract for the disposition of his property at the time of his death."[5]

During the life of the veteran, his property was his own to dispose of as he desired; his was an "intent to make a more binding and irrevocable provision than a legacy could be"[6] and a stipulation for notice to his heirs of the fact of his death was not required to make the provision valid. "Not until the ancestor dies is there any vested right in the heir." *Jefferson* v. *Fink*, 247 U. S. 294.

In passing the Act of June, 1910, Congress merely directed the terms and conditions under which veterans, consistently with state law, can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. Homes for the aged, needy, or infirm, in return for the benefits bestowed by

[4] "Contracts respecting the disposition of one's property after death, are not uncommon." Murphy v. Murphy, 217 Mass. 236.

[5] See, also, Holyoke National Bank v. Bailey, 273 Mass. 551; Ex Parte Simons, 247 U. S. 239.

[6] Krell v. Codman, 154 Mass. 458.

them, generally receive some benefit from any property or estates of their members.[7]

When McGovern entered this home he was aged, without family ties, lonely and physically incapacitated. There he received care, food, shelter and companionship. He would have been privileged to remain in the Home even though, after admittance, he had chosen to make the members of his family the recipients of the money, by gift, by will, or by notifying them to claim his property after his death.

The claim of the Government is based on a contract between the veteran and the Home. Nothing in the record indicates that the agreement was not fairly and voluntarily entered into between the parties, or that it was inequitable, unjust or not upon valuable consideration. Both parties were competent to make the contract. This contract is valid and enforceable, and since no claim was made by heirs or legatees within five years after his death, the veteran's personal property passed to the Home for the benefit of its inmates. The decree of the Court of Appeals is not in harmony with these views and is

Reversed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[7] See United States v. Bowen, 100 U. S. 508 (Cf. St. Benedict Order v. Steinhauser, 234 U. S. 640). See Digest of Poor Relief Laws of the Several States and Territories as of May 1, 1936, prepared by Robert C. Lowe and Staff, Legal Research Section, under the supervision of A. Ross Eckler, Coordinator of Special Inquiries, Division of Social Research, Works Progress Administration.